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Summary record of the 3235th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 8 March 2016, at 10 a.m.

Chair: Mr. Salvioli

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Initial report of South Africa (continued) (CCPR/C/ZAF/1; CCPR/C/ZAF/Q/1 and Add.1)

1. *At the invitation of the Chair, the delegation of South Africa took places at the Committee table.*

2. **The Chair** invited the delegation to continue its replies to questions raised by the Committee at the previous meeting.

3. **Mr. Jefferey** (South Africa) said that, under section 231 (2) of the Constitution, the Covenant was binding on South Africa, inasmuch as it had been approved by resolution in both the National Assembly and the National Council of Provinces. As to the question of whether there was a need to enact the Covenant into law under section 231 (4), the Government would consider the issue and, if necessary, take appropriate legislative action.

4. Under the Alteration of Sex Description and Sex Status Act, a person whose application for the alteration of the sex description on his or her birth register had been refused could appeal first to the Minister of Home Affairs and subsequently to the magistrate of the district in which he or she resided.

5. With regard to the question concerning the President of the Sudan, the Government had taken the matter to the Supreme Court of Appeal and was currently awaiting the Court's decision. He pointed out that President Al-Bashir had travelled to South Africa not to visit the country but to attend a summit of Heads of State of the African Union.

6. While his Government respected the observations of the Committee on polygamy that were set out in its general comment No. 28 and that served as guidelines to States parties on the interpretation of the Covenant in that regard, it had no plans to abolish the practice, which was recognized by the Constitution as marriage and a form of a family unit. The issue of polygamy had been considered by the Constitutional Court, which had ruled that, in polygynous marriages under customary law, the first wife's consent was required before a second marriage could be entered into.

7. The Government acknowledged that lesbian, gay, bisexual, transgender and intersex (LGBTI) persons experienced discrimination when trying to access services to which they were legally entitled. Accordingly, the Department of Justice and the National Task Team on Gender and Sexual Orientation-based Violence Perpetrated against LGBTI Persons had developed a basic guide for service providers in various areas of government, including the criminal justice system, in order to help them better understand the issues involved. No statistics on hate crimes as such were currently available, since the bill to create a specific offence of hate crime had not yet been passed. The Government had received the Human Rights Commission report on safety and security challenges in farming communities and was considering ways to deal with the issues raised.

8. There were currently 6.59 million people living with HIV in South Africa. A total of 3.4 million persons were receiving antiretroviral therapy, and transmission in pregnancy had been reduced by almost 90 per cent. The impact of that treatment and of prevention of mother-to-child transmission services was reflected in declines in mortality and an increase in life expectancy from 53 years in 2006 to 61 years in 2012. Child and infant mortality had declined by 25 per cent in the period from 2009 to 2012. The South Africa National AIDS Council had conducted various publicity campaigns designed, among other things, to raise awareness of World AIDS Day and to reduce the stigma attached to HIV/AIDS. The Council had signed a memorandum of understanding with Legal Aid South Africa with a

view to promoting access to justice for vulnerable groups, especially persons living with HIV/AIDS and tuberculosis. Furthermore, the AIDS Consortium had been appointed to develop a pilot stigma reduction programme in the Eastern Cape, which would subsequently be rolled out across the country.

9. Regarding the case of *Bradley McCallum v. South Africa*, his Government acknowledged its failure to submit a response when the matter had been raised before the Committee. As to the related civil matter in South Africa, the 231 applicants who had brought the case had taken a decision to reduce their number first to 4 and then to 2. Mr. McCallum, who was not one of the two remaining applicants, was entitled to launch proceedings on his own behalf. As to civil society reports concerning allegations of further assaults similar to those in the case under discussion, the Government was aware of a recent incident involving alleged excessive use of force at the Kgosi Mampuru correctional facility near Pretoria. The officials in that case had been suspended, and an investigation was under way. His delegation would welcome any information the Committee might have about other similar incidents.

10. Corporal punishment was currently banned in State institutions. A legislative amendment was planned to extend the ban to private institutions and the domestic setting.

11. **Mr. Nwaila** (South Africa) said that, following a series of attacks in 2015, displaced foreign nationals in the province of KwaZulu-Natal had been given the option of being either reintegrated into communities or assisted to return to their home countries. While most of the individuals concerned had chosen one of those two options, some 130 persons had refused the solutions proposed and had been accommodated temporarily on a family farm in Cato Ridge. The local authorities were working closely with those persons to resolve the issue.

12. As to the claim, raised at the Committee's 3234th meeting, that 900 foreigners had died as a result of xenophobic attacks in recent years, figures available to the delegation indicated that, between 2000 and March 2008, at least 67 people had died in such attacks. In May 2008, a series of attacks had left 62 people dead, 21 of whom had been South Africans. Furthermore, in 2015, another nationwide outbreak of attacks had resulted in 6 fatalities; 3 of the deceased had been South African citizens. In view of the disparity between the figures quoted in the report and those at the disposal of the delegation, it would be appreciated if the Committee could indicate the provenance of the information cited.

13. Regarding initiation practices, it was important to bear in mind that, under the Constitution, everyone had the right to participate in the cultural life of their choice and that persons belonging to a community should not be denied the right to enjoy their culture. Fatalities that had taken place in the course of initiation ceremonies in recent years had occurred mainly outside the jurisdictional areas of traditional leaders, in bogus and unregistered initiation schools. As part of a zero tolerance policy to stop the death of initiates, the authorities had established a national rapid response mechanism made up of representatives of the police, the national prosecuting authority and traditional leaders to ensure that all offenders were arrested and prosecuted. Furthermore, an initiation task team had been established to monitor conditions in all initiation schools and to intervene when necessary. The Government was currently preparing legislative proposals to close identified gaps in existing laws regulating initiation schools.

14. **Ms. Shabangu** (South Africa) said that the increase in the number of reported cases of domestic and gender-based violence could be attributed in part to the establishment of Thuthuzela Care Centres, which provided victims with a friendly reporting environment and access to various relevant services. Furthermore, 43 sexual offences courts had been established across the country to deal with the backlog of cases of violence against women. In addition, victim empowerment centres had been set up in police stations as part of a

process to make sure that victims of abuse were provided with the privacy that they needed. Efforts were also under way to improve rural women's access to justice and other services through infrastructure development.

15. **The Chair** said that, where cultural practices were concerned, the Committee was interested in their compatibility with the Covenant, rather than national legislation.

16. **Mr. Shany** said that he wished to make clear that the Committee was not a fact-finding body. It did, however, receive a considerable amount of information from a variety of sources; one way for it to ascertain the veracity of that information was to confront the State party with it and to request explanations. For instance, the figure of 900 deaths from xenophobic attacks had been cited in a 2014 United States Department of State report on South Africa. Similarly, several international media outlets had reported instances of abuse in a number of correctional facilities, including Bloemfontein, Mangaung and Pollsmoor Prisons. He would provide the delegation with details of those reports.

17. With regard to paragraph 16 of the list of issues, he requested confirmation that the period for which a permit was issued for asylum transit had been shortened from 14 to 5 days under new legislation adopted in 2014. It had been suggested that the Government sought to close central refugee reception offices in order to encourage applications in border areas, but the policy caused great difficulty for an asylum seeker arriving in Johannesburg, for example, or for asylum seekers already in the country, who had to travel to a distant refugee reception office, often at considerable expense.

18. He also wished to know whether it was the case that some officials, in the Beitbridge border post, among others, had adopted a policy of not providing transit permits but rather conducted de facto status determination, sometimes refusing entry. Asylum seekers had allegedly been arrested because they lacked documentation and had not been given the opportunity to seek legal representation or been informed of their rights in a language that they understood, but had been transferred to Lindela Repatriation Centre, where, again, de facto determination was made by unauthorized police officials. Sometimes, asylum seekers were held in police cells, which was contrary to the provisions of the Covenant. He also wished to know whether the current legal framework made provision for the naturalization of unaccompanied migrant children and foundlings.

19. The State party had not provided sufficient information in reply to paragraph 30. It claimed that it continued to roll out programmes aimed at raising awareness of individuals' rights and freedoms, but non-governmental organizations (NGOs) claimed that civil society had not been consulted on the drafting of the report. He urged the State party to reconsider its position in that regard: dialogue with civil society would bring great benefits.

20. **Mr. Seetulsingh** said that he would welcome further information on paragraph 11 of the list of issues. Disproportionately few complaints of violence committed by the police were followed up: in 2014, of 5,664 such complaints, only 95 had come before the courts. That was particularly surprising, in view of the fact that there had been 244 deaths in police custody, 396 deaths as a result of police action and 124 complaints of rape committed by police officers.

21. With regard to paragraph 17 of the list of issues, he noted that asylum seekers were entitled to adequate protection, access to justice and psychosocial services, yet there had been allegations that the processing of refugees was often corrupt. Proposed amendments to the Refugees Act, 1998, it was alleged, would reduce asylum seekers' access to their rights, allegedly to deter them from applying for asylum. He wondered whether applicants were informed of their rights in writing. The Committee had also learned that there were barriers to emergency medical treatment, despite the State party's claim that people came to South Africa for free medical treatment. Moreover, since everyone had equal rights under the Constitution, it was discriminatory not to allow asylum seekers to work while their

applications were pending. In that connection, he asked how many appeals before the Refugee Appeal Board were pending and how many had been referred to the High Court. It would be useful to learn whether refugees risked deportation to places where they might be killed, tortured or ill-treated and whether, if their documentation was not in order, asylum seekers could find themselves stateless.

22. With regard to paragraph 19 of the list of issues, he would like to know whether the harsh conditions at the Lindela Repatriation Centre had improved, following a damning report by the South African Human Rights Commission. It was reported that detainees were sometimes held longer than 120 days, without being informed of their rights, that deportations were sometimes delayed because of transport difficulties and that persons with HIV or tuberculosis did not receive treatment. He asked whether any investigation had been carried out into the deaths of two people at the Lindela Repatriation Centre in February 2016 and whether the Joint Inspectorate for Correctional Services was entitled to inspect the detention facilities there and, if not, what body could do so. He also wished to know what body was responsible for inspecting police cells, psychiatric hospitals, correctional facilities for young offenders and other places of detention. Lastly, noting that the courts had ruled that the closure of the refugee reception centres in Johannesburg, Port Elizabeth and Cape Town was unlawful, he wondered whether reports were correct that the centre in Port Elizabeth had been reopened.

23. **Mr. Muhumuza** said that the delegation should tell the Committee what measures were planned to decrease or eliminate the number of deaths of persons in police custody. In that connection, he wished to know what proportion of such deaths were of foreigners. The juvenile justice system should be strengthened with more financial and human resources; there were reports that juveniles were held without due process. He wondered at what age a juvenile became an adult for the purposes of detention and how many juvenile detention centres there were at the local, provincial and national levels.

24. **Ms. Cleveland** referring to the 2014-2015 statistics provided by the State party on overcrowding in prisons, namely, average overcrowding of 32 per cent and, in five facilities, of over 200 per cent, said that the Committee would be grateful for statistics disaggregated by facility across the country. She requested confirmation of the claim that Pollsmoor Maximum Security Prison was overcrowded to the extent of 309 per cent. A delegation from the Constitutional Court had described the conditions in that prison as profoundly disturbing, and had recommended that staff-inmate ratios, access to health and the infrastructure should be improved. That approach had been seconded by the Legal Resources Centre and Freedom House and she wondered whether the State party had a comprehensive plan to address the problem or to implement a recommendation made in 2013 by the South African Human Rights Commission that the service provision in Groenpunt Maximum Correctional Centre should be overhauled and changes made to the way in which complaints of corruption and other grievances were handled. She would also like to know what measures were taken to ensure that minimum standards on hygiene, physical and mental health, decent food and access to exercise were observed.

25. Noting that the Guidelines on the Conditions of Arrest, Police Custody and Pretrial Detention in Africa (the Luanda Guidelines) were pending, she would appreciate a status update on the Guidelines and their implementation. She would also like to know if it was possible to reduce the period that detainees spent on remand by allowing for the granting of conditional bail, with oversight by correctional officials and the use of electronic monitoring. Deferrals of bail applications should be eliminated and the maximum time for remand should be reduced to below 2 years. A mechanism to review excessive time on remand should be established.

26. With regard to paragraph 25 of the list of issues, she noted that human rights defenders faced threats, harassment and intimidation at the hands of both private

individuals and the police, and that the police failed to provide protection. She would be grateful to learn what measures were taken to guarantee freedom of expression and assembly for such activists and whether the police were properly trained and equipped to protect them from violent attack. She asked what measures were taken to prosecute and punish perpetrators of violence and to provide reparation to victims. Specifically, she asked the delegation to comment on the failure to provide police services to the Khayelitsha community; on the situation in the case of the founder of the Social Justice Coalition, Angy Peter, whose appeal had been heard in April 2015; and on the situation of the activists and community health workers in Free State who had been charged with participating in an illegal gathering. She also wished to know whether police investigations had been carried out into the murder of Noxolo Nogwaza, an activist for LGBTI rights or into the complaints by Abahlali baseMjondolo and by protesters against titanium mining in Xolobeni of the use of excessive force by the police, including the firing of rubber bullets.

27. **Mr. Bouzid**, referring to paragraph 18 of the list of issues, said that the Ministry of the Interior was reportedly intending to close a refugee reception centre in Cape Town, which would violate the right to protection of migrants, including unaccompanied children. The Committee had also heard reports that the processing of asylum seekers was subject to bribery and that discrimination against women and persons of different sexual orientation was widespread. The action by reception centres to determine the status of individual refugees was reportedly full of errors. He therefore wished to know whether the Government might bring the country's legislation into line with the Covenant and also accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. He asked whether it was the case that migrants were detained for extended periods.

28. He understood that legislation currently issued only in English would in future come out in Afrikaans, but he wondered whether use of the other nine official languages of the country would also be considered. The delegation had referred to the possible use of three more languages in the future; he would welcome details on the time frame for such action. Lastly, noting that, under article 23 of the Legal Aid South Africa Act, 2013 (Act No. 39 of 2014), the Minister of Justice and Correctional Services was required to make regulations on what cases were eligible for legal aid, he wished to know whether such regulations had been issued and what they contained.

29. **Mr. Iwasawa** said that, as the Covenant contained many self-executing provisions, it was difficult to understand why treaties had to be transposed into laws or regulations before they could be enforced by the courts.

30. Referring to paragraph 44 of the replies to the list of issues, he asked how the purpose of the Regulation of Interception of Communications and Provision of Communication-related Information Act (RICA) would be achieved. Intercepting communications outside the RICA regime was unlawful, but according to the Committee's information, some such surveillance was in fact being carried out. He asked the delegation to comment on the finding by the Ministerial Review Commission on Intelligence that the National Communications Centre (NCC) carried out unlawful surveillance.

31. Under article 6 of RICA, permission to intercept communication could be granted by a judge if there were reasonable grounds to believe that a serious criminal offence had been committed. According to the written replies, communications were intercepted only in exceptional cases. However, that information seemed to be contradicted by the annual report of the Joint Standing Committee on Intelligence, according to which only 5 of 387 requests submitted under RICA had been rejected by a judge. He therefore wondered how effective procedural safeguards were in the protection of privacy. The delegation should explain how the mandatory retention of communications data was justified under article 17 of the Covenant.

32. He asked the delegation to assess the effectiveness of the project conducted by the Independent Electoral Commission with a view to providing a civic and voter education programme for the disability sector, as well as its efforts to improve access of persons with disabilities to the voting process.

33. The Traditional and Khoi-San Leadership Bill provided for the recognition of Khoi-San communities and leaders on the basis of certain criteria. According to some sources of information, the Bill had been criticized by Khoi-San groups, academics and activists, who claimed that the criteria were too strict and that the Bill entrenched the boundaries imposed by the apartheid Government in 1951; the delegation's comments in that regard would be appreciated. Furthermore, he wished to know why the Khoi-San languages were not recognized as official languages under the Constitution. Did the Constitution guarantee the right of indigenous people to receive education in the language of their choice, even if that language was not one of the official languages? What measures had been taken to promote, teach and preserve indigenous languages?

34. Referring to paragraph 29 on the list of issues, he said that the Committee would appreciate a response to claims that existing subsistence fishing quotas of indigenous groups had been taken away without warning.

35. In 2005, in his mission report on South Africa, the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people had recommended that, in the case of indigenous communities that were dispossessed of their lands before the Native Land Act of 1913, positive legal and judicial action should be initiated to enable those communities to file legitimate claims for restitution. Did the 2014 amendment make restitution possible for indigenous communities that had been dispossessed of their land before 2014? The reopening of the land claims process had been criticized for the failure of the Commission on Restitution of Land Claims to process claims and for the fact that there was no budget to implement the programme; he would appreciate the delegation's commenting on that information.

36. **Mr. de Frouville** said that on 8 February 2016, the National Director of Public Prosecutions of South Africa had announced that it would bring charges against four former members of the police force from the apartheid era for murder and kidnapping in connection with the tragic case of Nokuthula Simelane who had been kidnapped, tortured and subjected to forced disappearance in 1983. He enquired why it had taken so long for the perpetrators to be charged and why so few similar cases had been investigated. Recalling that the Truth and Reconciliation Commission's recommendation that legal proceedings should be instituted in 300 cases, including the aforementioned case, he said that the State party should explain why the recommendations of the Commission had not been implemented, and what measures would be taken to ensure their implementation in the future.

37. Furthermore, 478 missing persons had been identified, 64 of whom had allegedly been victims of forced disappearances. According to some sources, the actual number of missing persons was around 2,000. He requested information on the results of the work of the missing persons task team, including how many bodies had been found, identified and returned to families and how many cases remained pending.

38. **Sir Nigel Rodley** asked whether there were groups in South Africa with polyandrous customs. If not, he said he wished to know whether a polyandrous marriage would be concluded in a State registry or under common law and in that case, what rights the spouses would have in the event of separation, dissolution or death. Lastly, he requested updated information on measures taken to deal with deaths in custody.

39. **Mr. Rodríguez-Rescia** asked what measures the State party had taken to fight against corruption that affected participation in public life. He would also welcome

information on measures to prevent political parties from being financed in a way that encouraged corruption, hindered political participation, enriched civil servants and established a culture of impunity.

The meeting was suspended at 11.40 a.m. and resumed at 11.55 a.m.

40. **Mr. Jefferey** (South Africa) said that while the Government was aware of the issues involving remand detainees, communities often opposed the release on bail of suspects who had committed serious crimes. The Government was working to process cases more quickly at various levels of the court system and give priority to backlog cases.

41. With regard to questions on interception of communications, he said that privacy rights were protected under the Constitution. To his knowledge, no applications relating to the constitutionality of RICA had been submitted. However, the Government would soon be meeting with one association in order to discuss its concerns in relation to RICA.

42. Regarding polygamy, since the Recognition of Customary Marriages Act was not gender-specific, it might be possible for polyandry to take place as well. Responding to a question on the Independent Electoral Commission, he said that a disability policy had been adopted by the Cabinet, which included measures to help persons with disabilities to participate in elections. Information on that policy would be provided to the Committee.

43. The Government was working with the Human Rights Commission in order to improve the monitoring of detention facilities. Responding to the question on missing persons, he said that, to date, 101 bodies had been recovered; of those, 81 bodies had been identified and returned to families. Currently 500 further cases were being investigated. Around 300 cases had been handed down to the National Director of Public Prosecutions by the Truth and Reconciliation Commission. However, evidence that had been given before the Commission could not be used against a person in a criminal court. Only seven cases were still pending. Four people had been arrested for the murder and disappearance of Nokuthula Simelane. The perpetrators had been charged in February 2016, then released on bail; the date for the trial would soon be announced.

44. With regard to human rights defenders, the Government would address related concerns with civil society organizations. South Africans had the right to protest and did so quite regularly. Such protests often resulted in damaged property, including to schools, libraries and factories. Referring to the specific cases queried by the Committee, he said that the South African legal system was generally recognized as fair and any court sentences could be appealed to the Supreme Court of Appeal and the Constitutional Court.

45. Regarding the Protection of Personal Information Act, the initial delay in implementation was due to an internal matter; an Internal Regulator was expected to be appointed in the near future. Turning to the issue of political party financing, he said that there had recently been a request that the Government should be compelled to adopt legislation to monitor party funding. The application had been rejected on grounds that the applicants should have made use of the Promotion of Access to Information Act to request details on party funding. However, the Government was currently debating the issue.

46. In order to be approved by the President, laws had to be drafted in English and in one of the other 10 official languages, which was chosen on the basis of a roster. The Constitution had been translated into 11 official languages and into Braille.

47. **Mr. Nwaila** (South Africa) said that, on 2 March 2016, the National Khoi-San Council had appeared before the Portfolio Committee which was considering the Traditional and Khoi-San Leadership Bill. The concerns raised in relation to the Bill would be considered. However, as the Khoi-San people were scattered throughout the country, the aim of the Bill was to ensure that they could identify themselves. Some people believed that the Bill reinforced apartheid boundaries. However, under traditional leadership, there were

no boundaries but jurisdictional areas which sometimes overlapped with municipal areas. The Government would consider self-identification criteria for people living outside those areas as well.

48. Responding to a question on the Khoi-San languages, he said that they had not been codified by the time the South African Constitution had been adopted. The Pan South African Language Board was responsible for developing those and other African languages.

49. **Mr. McKay** (South Africa) said that, under the amended Refugee Act, the asylum transit period could indeed be reduced from 14 to 5 days. Most asylum seekers entered South Africa through its north-eastern border. One refugee reception centre was located in Musina, which was about 10 km from the border area, so most persons entering the country could reach the centre within five days. Those who entered through the Lebombo border post could travel to the nearest reception centre in Pretoria within a day. All asylum seekers who made their intention to apply for asylum known were issued with an asylum transit permit, which allowed them to travel to the nearest asylum centre. The Refugee Act also allowed for entry without documents, in which case the persons concerned had to be transported to the nearest asylum centre. The Government would investigate any allegation of Beitbridge authorities not issuing transit permits and would deal with officials found to be denying asylum seekers their rights.

50. NGOs had been consulted on the proposed Refugee Act. Their proposals had been included in the draft legislation which would be submitted to Parliament and they would also have an opportunity to participate at the parliamentary level.

51. Deportees were kept at various locations. Undocumented migrants arrested in a given province often came from countries that bordered that province and they were deported directly from the province to their countries of origin. The Lindela Repatriation Centre was reserved mainly for persons from countries neighbouring the Gauteng Province and for those arrested in the rest of South Africa who were from countries further to the north, from South-East Asia or other parts of the world. Those people had to be deported using air transport.

52. With the notable exception of the right to vote, asylum seekers and refugees enjoyed many of the same rights as South African citizens, including with regard to access to mental health and psychosocial services. There were no restrictions on their rights to work or to study and their social integration was encouraged.

53. While the South African Human Rights Commission was the body chiefly responsible for oversight of Lindela Repatriation Centre, the International Committee of the Red Cross and the Portfolio Committee on Home Affairs conducted regular visits and reported their findings.

54. The decision of the Department of Home Affairs to close two refugee reception offices in Port Elizabeth and Cape Town had been challenged before the Supreme Court of Appeal and the Constitutional Court, both of which had ordered the reopening of the Port Elizabeth office. The Department had been in the process of executing the order, but had encountered resistance from local business owners near the site identified for the office. It was therefore trying to find an alternative location and, in the meantime, was sending monthly progress reports to the Constitutional Court.

55. The Government was considering signing the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness, and in the meantime was working to ensure that all the prerequisites for signing and ratifying the two Conventions were satisfied.

56. **Ms. Rotmann** (South Africa) said that the transfer of inmates to alleviate prison overcrowding was made harder by the fact that remand detainees had to be close to the

court where their trial was being held and that the proximity of convicted offenders to their community was a major factor in the success of efforts to rehabilitate them.

57. In response to the report on Pollsmoor Prison published by Constitutional Court Judge Edwin Cameron, inmates had been temporarily moved to other facilities to enable the prison authorities to address some of the issues that had been raised. Further visits had subsequently been undertaken by another Constitutional Court judge and by the Judicial Inspectorate for Correctional Services. The findings, when presented, were expected to be more positive. Since Judge Cameron's visit, overcrowding had been reduced, a new on-site pharmacy had opened and additional nurses and psychologists had been recruited. There were also plans to increase the maintenance budget and to improve the waste disposal and laundry facilities.

58. Many prisons in South Africa had been built prior to 1994 and were poorly equipped to promote rehabilitation. Steps were being taken to resolve ventilation issues and to create more space for recreational activities, the organization of which was complicated by the necessary separation of prisoners belonging to rival gangs. In the Western Cape, two new facilities with a combined capacity of over 600 prisoners would be opened in the near future.

59. Under the Code of Criminal Procedure, judges could rule on whether the continued detention of remand prisoners was justified at any time. The cases of persons detained on remand for over two years were automatically referred to court for reconsideration. Electronic tagging was viewed as a possible means of reducing the number of remand detainees, but greater cooperation was needed between the judiciary and the prison authorities before use of the measure could be expanded. Representatives of the Department of Correctional Services had participated in several workshops on the Luanda Guidelines and had provided input on the development of indicators in that regard.

60. At Grootvlei Prison, serious infrastructural problems had been identified and catering services had been outsourced. Nevertheless, substantial progress was being made and the occupancy rate stood at 127 per cent, which was below the national average.

61. No persons under the age of 14 years were detained. Individuals aged 14 to 17 were treated as children and those aged 18 to 20 as juveniles. Where possible, juveniles and adults were detained separately. Disaggregated data on the prison population and information regarding the Mangaung Correctional Centre would be submitted to the Committee in writing.

62. **Mr. McKay** (South Africa) said that refugees were entitled to reside in South Africa and were never deported. Asylum seekers whose applications were rejected had the right of appeal and could also apply for judicial review of the decision. Only once all appeals had been exhausted could they be returned to their country of origin.

63. Migrants could be detained for an initial period of 30 days, which could be extended by a further 90 days by a magistrate. Applications for an extension had to be submitted to court by day 25. On day 120, detainees had to be released or deported. Any failure to satisfy procedural guidelines would result in detainees being released. Migrants could not be detained unless it was made clear to them that there were suspicions about their status. Once detained, assistance had to be provided in confirming their status and nationality. Only persons found not to possess the necessary documentation could be transferred to Lindela Repatriation Centre. Unaccompanied minors and other persons belonging to vulnerable groups were not detained; instead, they were kept in places of safety.

64. **Mr. Jefferey** (South Africa) said that all persons were entitled to representation in criminal matters if substantial injustice might otherwise result. Legal aid was provided on the basis of a means test and the amount was set in the Legal Aid Guide, which was

approved by Parliament. Steps were being taken to increase the availability of legal aid in civil cases. Under the Legal Practice Act, the South African Law Reform Commission had been tasked with investigating the high cost of litigation in South Africa.

65. The Child Justice Act applied to persons who were arrested or summoned to appear in court prior to their eighteenth birthday and, at the request of the chief prosecutor, to persons aged under 21 years who had committed the offence for which they were being tried prior to their eighteenth birthday. Since the adoption of the Act, there had been a significant decrease in the number of minors sentenced to imprisonment in a detention centre or a secure care facility, of which there were 31 in the country, with a bed capacity of 2,696. Following a review, a proposal was set to be considered by Parliament to raise the minimum age of criminal capacity from 10 to 12 years, with a rebuttable presumption that children who were between 12 and 14 years old were incapable of committing a criminal act.

66. **Sir Nigel Rodley**, noting that the delegation had not yet provided updated information on the measures taken to prevent deaths in police custody, nevertheless commended the role that the State party had played in the revision of the Standard Minimum Rules for the Treatment of Prisoners, which would contribute significantly to enhancing the protection of prisoners.

67. Turning to the issue of regional remedies for human rights violations, he said that he wished to know why the State party had agreed to the removal of the possibility of individual petitions to the Southern African Development Community Tribunal and to the Tribunal's subsequent dissolution.

68. **Mr. Muhumuza** urged the State party to continue to guarantee the independence of the judiciary and the accessibility and affordability of defence counsels.

69. **Ms. Cleveland** asked whether it was true that inmates at the C Max and Ebongweni maximum security prisons had been subjected to solitary confinement and, if so, why.

70. **Mr. Shany** said that he wished to know whether asylum seekers were entitled to have legal assistance assigned to them during the asylum determination process in all cases where the interests of justice so required.

71. **Ms. Shabangu** (South Africa) said that the upcoming twentieth anniversary of the adoption of the Constitution had brought a renewed commitment to the advancement of human rights in South Africa. The Government had launched programmes to raise awareness of human rights issues and was organizing campaigns to celebrate the International Day for the Elimination of Racial Discrimination on 21 March. It had taken note of the Committee's questions and recommendations, and would endeavour to submit any outstanding replies within 48 hours.

The meeting rose at 1.05 p.m.